

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 8950

BRIEF FOR PETITIONER

United States Court of Appeals

DISTRICT OF COLUMBIA

— 306

WARDMAN REAL ESTATE INVESTMENT CORP.,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent.

On Petition for Review of Decision of the Board of
Tax Appeals for the District of Columbia.

*United States Court of Appeals
for the District of Columbia*

FILED MAR 26 1945

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United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8950

WARDMAN REAL ESTATE INVESTMENT CORPORATION,
A CORPORATION,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent.

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

The petitioner is a corporation with its principal office in the District of Columbia. The Assessor of the District of Columbia assessed additional income taxes against petitioner for the year 1942. (D. C. Code §47-1529; §47-1531). Notice of such deficiency was dated September 3, 1943, and was paid by the petitioner on November 2, 1943 under protest in writing. The petitioner appealed from such assessment to the Board of Tax Appeals for the District of Columbia on December 1, 1943. (D. C. Code §47-2403). The decision of said Board was dated October 17, 1944. The petitioner filed a petition for review by this Court of said decision on November 16, 1944. (D. C. Code §47-2404). The transcript of record was filed.

STATEMENT OF THE CASE

Petitioner was organized under the laws of the State of Virginia in 1922 for the primary purpose of buying notes. (App. 15).

From the date of its organization it was engaged exclusively in the business of buying second trust notes secured by real estate, (App. 8, 11) which were held until paid in full. In many instances foreclosure was necessary and properties were bid in by petitioner. (App. 17a). Petitioner has never been engaged in the business of buying and selling real estate, has never been engaged in the business of building, and has never been a licensed real estate broker, (App. 11) nor been engaged in the real estate brokerage business. All of the real estate of petitioner was acquired by foreclosure and then held as rental property until it was deemed advantageous to sell. When petitioner sold property it was always through a licensed real estate broker to whom commission was paid.

The real estate sold in 1942, being the sales in question, was all acquired by foreclosure during the years 1930 through 1935 and resulted in a profit of \$12,227.44, they were the following:

723 Roxboro Place
6302 5th Street
2925 Cathedral Avenue
526 Tuckerman Street
2911 28th Street
2104 1st Street
715 Tuckerman Street
710 Tuckerman Street
525 Somerset Place

(App. 18, 19)

Petitioner sold only three pieces of real estate during the ten year period 1922 through 1931 inclusive. Petitioner

buys only property it has trusts on, does not buy at other foreclosures or on the open market. Petitioner held all of the property in question here for a period of more than two years.

STATUTES INVOLVED

(a) No gain or loss from the sale or exchange of a capital asset shall be recognized in the computation of net income under this statute. For the purpose of this chapter, "capital assets" means property held by the taxpayer for more than two years (whether or not connected with his trade or business) but does not include * * * property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. (Act of July 26, 1939, 15 Stat. 1091, ch. 367, Title II, sec. 6; D. C. Code §47-1506).

STATEMENT OF POINTS

The only point involved is whether the profits from the sale of real estate sold in 1942 were gains from the sale of capital assets and therefore not taxable, or whether such profits were from the sale of property held primarily for sale to customers in the ordinary course of business and taxable as ordinary income.

SUMMARY OF ARGUMENT

Petitioner is a corporation engaged exclusively in the business of investing in promissory notes secured by deeds of trust on real estate, and has never been engaged in the business of buying and selling real estate. The nine properties sold in the year in question had been owned by the petitioner for more than two years as rental properties and were sold because it was not advantageous to hold them. Therefore said properties were capital assets and were not held primarily for sale to customers in the ordinary course of petitioner's business.

ARGUMENT

The Assessor held the sales of real estate in 1942 to be sales of property held primarily for sale to customers in the ordinary course of business and taxable as ordinary income; the Board of Tax Appeals affirmed this holding. The Board cited as authority for its decision the case of *Real Estate Mortgage and Guaranty Corporation vs. District of Columbia*, D. C. B. T. A. No. 713, affirmed 78 U. S. App. D. C. 390, 141 Fed. (2d) 361; and the *Hercules Motors Corporation* case, 40 B. T. A. 999, 1001.

In the *Real Estate Mortgage and Guaranty Corporation* case, *supra*, the petitioner was a rental investment corporation which had never been engaged in the business of buying and selling real estate, but which had over a period of years sold a few properties which it had previously acquired by foreclosure in protecting investments made by it in notes secured by deeds of trust and mortgages on real estate. The Court held that the properties were held primarily for sale to customers in the ordinary course of petitioner's business. The decision in this case was based upon two authorities: (1) A General Counsel's Memorandum construing Sec. 117(b) of the Revenue Acts of 1934 and 1936 (G. C. M. 21497, Cum. Bull. 1939—2, p. 187) and (2) a decision of the Board of Tax Appeals, now the Tax Court of the United States, in the *Hercules Motors Corporation* case, 40 B. T. A. 999, the General Counsel's Memorandum states:

“A bank, mortgage finance company, or a building and loan association which is offering for sale parcels of real estate on which it has been compelled to foreclose is holding property ‘primarily for sale to customers in the ordinary course of * * * trade or business’ within the provisions of section 117(b) of the Revenue Acts of 1934 and 1936, and the gains or losses incurred in such sales are to be treated as ordinary gains or losses and not as capital gains or losses.”

The *Hercules Motors Corporation* case, *supra*, quotes with approval this General Counsel's Memorandum but that case involved trade acceptances which an automobile dealer was forced to accept as part of its regular course of dealing in selling automobiles.

In the case of the *Kanawha Valley Bank v. Commissioner of Internal Revenue*, in the Tax Court of the United States, Docket No. 3029, promulgated October 31, 1944, the General Counsel's Memorandum, *supra*, is reversed. In the *Kanawha Valley Bank* case, the petitioner was a corporation engaged in the banking business at Charlestown, West Virginia.

During the calendar year 1940 petitioner sold three parcels of real estate, two of which it acquired within that year and the third in the year previous, all acquisitions being by foreclosure of liens obtained in connection with regular loan transactions in the carrying on of its usual banking business. On two of the sales petitioner realized a profit and on the third a loss. On its returns petitioner treated these transactions as sales of capital assets giving rise to short term loss or gain.

Petitioner is not permitted under the laws of West Virginia to carry on a real estate business and is required in such cases as those mentioned above, to dispose of such real estate within a period of five years. As a result of this requirement, it has been petitioner's established practice to immediately list for sale with a subsidiary corporation engaged in the real estate business any real estate to which it takes title as a result of efforts to collect upon its loans.

In determining the deficiency for 1940, respondent has treated the gains and loss from the disposition of these three parcels of real estate as ordinary gain or loss.

“OPINION.

“LEECH, *Judge*: The issue is whether or not the parcels of real estate * * * acquired by petitioner, under the circumstances set out in our findings of fact, constituted capital assets within the purview of section 117(a)(1) of the Internal Revenue Code, 1939 edition.¹

“There is no doubt that in each instance these assets constituted ‘property held by the taxpayer.’ Respondent does not contend that they constituted ‘stock in trade’ or ‘property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year.’ His contention is that they constituted ‘property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.’

“With respect to the three parcels of real estate involved, respondent relies on G. C. M. 21497, C. B. 1939—2, p. 187, which holds that in all cases parcels of real estate acquired by a bank by foreclosure must be considered as held by it primarily for sale to customers in the ordinary course of trade or business and that the gains and losses resulting from its dispositions are ordinary in character. We think, however, that the reasoning upon which the announced rule is predicated cannot be reconciled with our view expressed in *Thompson Lumber Company*, 43 B. T. A. 726. We held there that a taxpayer corporation whose principal business was furnishing lumber and building material and which took over, either by foreclosure or

¹SEC. 117. CAPITAL GAINS AND LOSSES.

(a) Definitions.—As used in this chapter—

(1) CAPITAL ASSETS. The term “capital assets” means property held by the taxpayer (whether or not connected with his trade or business) but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (1).

voluntary conveyance various properties representing the security pledged for unpaid accounts, even though its charter permitted it to legally carry on a real estate business, was not by reason of such acquisitions to be considered as carrying on such a business and that the gains and losses realized upon the disposition of these properties were capital in character.

“In the present case the facts support more forceably than the facts in *Thompson Lumber Company, supra*, the conclusion that the parcels of real estate were capital assets. In the latter case there were a number of properties involved, while here we have only three instances of acquisition and sale in the two years presented. *Cf. Ehrman v. Commissioner*, 120 Fed. (2d) 607; *Snell v. Commissioner*, 97 Fed. (2d) 891. In *Thompson Lumber Company, supra*, the taxpayer was legally empowered under its charter to carry on a real estate business, while in this case the petitioner is precluded by Section 3128 of the West Virginia Code of 1937, from engaging in such business. That statute permits the acquisition of real estate by a banking institution only for use as its offices or such as is acquired as an incident of the satisfaction of debts, and properties acquired in the latter case are required by the statute to be disposed of at the earliest practicable date.

“We think it unreasonable to conclude that petitioner, forbidden by state law to carry on a real estate business, was actually engaged in that business and selling real estate to customers in the regular course thereof, merely because it had acquired and sold three parcels of real estate over a period of two years, the transactions in each instance being an incident to the collection or recovery of money loaned by it in the transaction of its regular banking business. We think that the three parcels of real estate here involved were capital assets in petitioner's hands within the purview of section 117(a)(1), *supra*, *Thompson Lumber Company, supra*.” * * *

In the case at bar the taxpayer corporation is prohibited by law from engaging in the business of buying, selling, or dealing in real estate by Title 29 Section 201 of the D. C. Code, 1940 Edition, which provides as follows:

“* * * That nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real estate agents or brokers.”; and the case of *Hite v. Richmond Park Improvement Company*, 47 App. D. C. 518 which holds that “A foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. * * *.” (*Groo v. Norman & Robinson*, 42 App. D. C. 387)

A few loan transactions such as a few sales of real estate as in the case at bar which are of different character from the ordinary business conducted by the taxpayer, to-wit, a brokerage business, do not constitute *doing business*.

During the period of twenty-one years from 1922 through 1942 inclusive the taxpayer sold a total of eighteen pieces of real estate all of which had been acquired by foreclosure on deeds of trust securing notes held by the taxpayer (App. 17c, 17d).

The real estate sold by the petitioner in the case at bar *was not held primarily for sale*, as they were held and rented for a number of years. The profit which petitioner derived from the sale of said real estate is a capital gain even if the petitioner was engaged in the real estate business.

[*Ashton C. Jones, Jr., et al., v. Commissioner*, Docket Nos. 110373 and 110374 of the Tax Court of the United States, entered March 22, 1943. (CCH Dec. 13, 080 (M))].

In the case of *Ashton C. Jones, Jr., et al., v. Commissioner, supra*, the facts were as follows:

"Jack R. Jones and Ashton C. Jones, Jr., are brothers. For convenience they will hereafter be referred to as 'petitioners.' Helen M. Jones is the wife of Jack R. Jones. In 1937 petitioners entered into an oral joint venture or partnership designated as Jones and Jones. For the year in question, the partnership and the individuals kept their books and made their Federal income tax returns, which were filed with the collector of internal revenue at Richmond, Virginia, on a cash basis.

"The property which was the original subject matter of the joint venture or partnership was improved real property located on North Wilson Boulevard in Arlington County, Virginia. Each brother contributed equal parcels of land, on each of which was a house. Jack had acquired his by a gift from his father and Ashton had purchased his from his father. The total area of these adjoining properties was 27,741 square feet. In the same year the partnership borrowed \$5,000 from the First National Bank of Alexandria, Virginia, which it used to purchase an adjoining piece of property consisting of several lots and improved with a house. These three properties were rented during the period 1937 to the date of their disposition in 1939. The foregoing transactions were the only ones involving the acquisition or sale of real estate by the partnership during 1937.

"In 1938 the partnership acquired a two-thirds undivided interest in property on North Glebe Road in Arlington, and the partnership sold one of the houses and 10,198 square feet of the North Wilson Boulevard property. These were the only transactions of the partnership involving the purchase or sale of real estate in 1938.

"In 1939 the partnership acquired the remaining one-third interest in the Glebe Road property. This had been improved with a store which was rented in that year. In 1939 the partnership sold 3,064 square feet and 3,885 square feet of the North Wilson Boulevard property. The selling

price of the former was \$3,064 resulting in a gain of \$1,871.52. The selling price of the latter was \$3,885, resulting in a gain of \$2,228.23. Also in 1939 the partnership acquired a lot in Lee Heights for \$584.62. The foregoing were the only transactions of the partnership in 1939 involving sale or acquisition of real estate.

“During the years 1937 to 1939, inclusive, Jack and Ashton were full-time employees on a salary basis of the firm of George H. Rucker Company of which their father was a principal member. The partnership did not maintain any separate offices to conduct its transactions. * * * They both held licenses as real estate salesmen; Geo. H. Rucker Co. had a broker's license.

“The Geo. H. Rucker Co. was engaged in the business of real estate, loans, and insurance. Ashton and Jack devoted practically all of their working time to the Rucker Company. The partnership took but little time; its books were kept by Ashton in the evening and on Sunday afternoons.

“One of the three properties acquired by the partnership in 1937 was corner property and had a frontage on a proposed Fairfax Drive as well as on Wilson Boulevard. The other properties had a rear ‘frontage’ on the proposed Fairfax Drive. The purchase of the adjoining property with the \$5,000 loan in 1937 gave the partnership the entire block of property, with the exception of one corner which could not be acquired. At the time of acquisition petitioners thought that the location was a ‘key’ one with great possibilities for future value and income production; that it was good property for a long-term investment; that Fairfax Drive would be improved, and that its improvement would result in a sharp rise in value of the properties in question; that the business area of Clarendon was moving in the direction of the property; that it was a bit too early to do so, but that they could build stores on the property and keep it for investment; that

they might obtain their future financial independence by renting such stores and building up the assets of the partnership. The primary purpose in acquiring the three adjoining properties in 1937 was for investment.

“The sale of part of the Wilson Boulevard property in 1938 was made after a broker approached petitioners. Petitioners had not actively tried to sell the property. They never made active efforts to sell any of the partnership property or discussed its sale. It was represented that stores would be built.

“The sale in question was in 1939 and was of parts of the Wilson Boulevard property. It was also the result of offers presented by the purchaser, and it was also represented that a store would be constructed on the property, which petitioners thought would be to their advantage. No provision covering the construction of a store was put into the contract. Petitioners were satisfied to sell without obligating the purchaser to build stores. They took his statement in good faith, knowing that the purchaser might change his mind or be prevented from building. Petitioner's reason for making the sale was the partnership's need of money to hold the rest of its property, and the above-mentioned representation that a store would be built. In 1941 the purchaser of one of the parcels built some stores on the property. No stores were built by the other purchaser.

“Petitioners foresaw as early as 1937 that they would probably need additional funds. They knew that they could have obtained whatever money was necessary to finance the property from their father. They were not at the point of losing the property in 1939 and they could have carried it.

“The partnership was motivated in selling the property sold in 1939 because of the price offered. They would have sold it from the beginning if they had been offered

a sufficiently attractive price. The receipt of the offer in 1939 was not particularly surprising.

“The partnership in 1941 built a store on their remaining Wilson Boulevard property at a cost of about \$190,000 which they leased to Sears, Roebuck for 15 years.

“The partnership return for 1939 shows income of \$186.34 from interest and \$3,457.16 from rents; and deductions for taxes, interest, repairs, depreciation and other deductions aggregating \$3,213.33, resulting in ordinary net income of \$430.17.

“On their respective returns petitioners reported the gain on the sale of property in 1939 as capital gain. Respondent, in determining the deficiency, treated it as ordinary gain.

“OPINION.

“The profit which petitioners derived from the sale of real estate is a capital gain within the meaning of section 117(a), Internal Revenue Code, even though they were engaged in the real estate business, if the property in question was not held primarily for sale. In the light of the record it might be difficult to hold that petitioners through their partnership were not engaged in the real estate business. They pooled their interests in a common venture with the purpose of making profits, and filed a partnership return of the income so received. In that return, the line opposite “Business or Profession” is left blank, but if it had been filled in, it is difficult to see how anything other than ‘real estate’ or some similar term would properly be employed. And the testimony shows that their purpose was to build up the enterprise to that aside from any other interests it might be the source of their future financial independence.

“As the case is presented, however, we do not reach that question for respondent concedes in his brief that

'the testimony shows that the primary purpose of petitioners in acquiring this property may have been for investment.' It is not clear whether the word 'primary' is intended to mean 'original' or 'principal' but at any rate it is the word the statute employs. The sole argument on this branch of the case is that notwithstanding such a 'primary purpose' there was a subsequent change in the motivation with respect to the property which was sold.

"We may accept the assertion that since the legislation uses the term 'held' it is material to ascertain the intention governing the parties in their continued ownership, as well as in the original purchase. *Richards v. Commissioner*, (C. C. A., 9th Cir.) 81 Fed. (2) 369, (36-1 USTC Para. 9092.) But there is no evidence here save the sale itself which indicates a change in the attitude of the owners or their purpose in holding the property. No efforts were made at any time to sell the property or list it for sale. Its sale was not discussed. Apparently, no price was set. The initiative came from the prospective buyer, and we think it may fairly be said that, as far as the record goes, it was his intention to purchase, rather than that of petitioners to sell, which resulted in the ultimate sale. And the mere fact of sale cannot be sufficient to demonstrate the purpose of the prior holding, for if this were so, there never could be a sale of a capital asset by a business enterprise. Once it is conceded that the primary purpose was to hold the property for investment the record requires the conclusion that the situation was no different when it was sold.

"Cases dealing with real estate subdivisions are clearly beside the mark. E. g. *Neils Schultz*, 44 B. T. A. 146 (Dec. 11754) [appeal dismissed, per curiam, (C. C. A. 9th Cir.)] 123 Fed. (2d) 1020. * * * Property involved in such activity is ordinarily held primarily for sale. The question then arises whether there is a sufficient frequency and continuity to constitute a business. In some instances that character-

istic is found to be lacking and even where the primary intention to sell is inescapable, the property may yet be held to constitute a capital asset. E. g. *Phipps, et al., Commissioner* (C. C. A. 2nd Cir.), 54 Fed. (2d) 469, (1931 CCH Para. 9665). Here we have the converse of that class of situation where even though the transaction occurred in the operation of a business, the original and principal investment purpose precludes any finding that the property was held primarily for sale. Since the real estate in question falls within the statutory definition of capital assets, the profit resulting from its sale was properly reported as capital gain.

“Decision will be entered under Rule 50.”

If the decision of the Board of Tax Appeals for the District of Columbia in the case at bar is sustained, then the taxpayer is confronted with the following dilemma:

A Federal tax statute and a District of Columbia tax statute both of which have almost exactly the same language being interpreted by the Federal Courts in an exactly opposite manner, (Sec. 117(a)(1) Internal Revenue Code, 1939 ed. supra) (D. C. Code §47-1506, supra) that is a sale of a piece of property by a brokerage firm, a bank, or a mortgage finance company which it owns would be construed by the District of Columbia Government as a sale in the ordinary course of its trade or business and would be construed as a sale of a capital asset by the Federal Government.

CONCLUSION

Petitioner respectfully submits that the properties sold by it in 1942 were capital assets, and the proceeds derived therefrom were not ordinary income subject to taxes under the District of Columbia Revenue Act of 1939, supra; that the decision of the Board of Tax Appeals for the District of Columbia should be reversed and the tax in the amount

of \$636.12 for the year 1942 should be held to have been erroneously assessed against and collected from the petitioner.

Respectfully submitted,

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No. 8950

BRIEF FOR RESPONDENT

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

WARDMAN REAL ESTATE INVESTMENT CORP.,
Petitioner,

v.

DISTRICT OF COLUMBIA, *Respondent.*

ON PETITION FOR REVIEW OF DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 8950

WARDMAN REAL ESTATE INVESTMENT CORP.,
Petitioner,

v.

DISTRICT OF COLUMBIA, *Respondent.*

BRIEF FOR RESPONDENT

COUNTER-STATEMENT OF THE CASE

Petitioner is authorized under its certificate of incorporation to buy, sell, rent, exchange, or otherwise acquire and hold, own, improve, develop, rent, mortgage, encumber, sell or otherwise dispose of real and personal property of every

character and description in any part of the world, and in any manner to turn the same to account (App. 16).

During the period from its incorporation in 1922 (App. 8) through and including the year 1931, the petitioner's only sources of income were from discounting notes and from interest, with the exception of a dividend for \$26.00 received in 1927, and gains of \$769.05 and \$1,811.41 from the sales of premises 428-430 R Street and 729 Somerset Place, N. W., respectively, both of which sales were made in 1931. During this period of time the petitioner did not receive any rental income from any property owned by it. The petitioner operated at a loss for three of the ten years covered in this period (1929, 1930, 1931), and sustained the largest loss of this period in 1931 (\$35,549.86), when it wrote off \$45,153.97 as "bad debts" (App. 17a). These "bad debts" must have resulted from defaults in payment of promissory notes bought and held by the petitioner because the testimony was that the petitioner's business was that of buying second trust notes (App. 11, 12). Petitioner did not sell any real estate during this period other than the two aforementioned premises. Petitioner's gross income for any one year, from the time of its incorporation through 1942, reached its peak in 1927 when it amounted to \$132,487.77. In that year (1927), petitioner received \$58,656.05 from discounts earned, \$73,805.72 in interest, and \$26.00 in dividends. It had no source of income in that year other than the three mentioned (App. 17a). Petitioner's gross income from discounts and interest took a sharp decline each year for the succeeding four years (1928, 1929, 1930, 1931) (App. 17a), and its income from such sources never thereafter even approached the amounts it had received from such sources in 1927 and in several years prior thereto (App. 17a, 17d).

As found by the Board (App. 3), and as disclosed by the record, during the period 1929 through 1937, the petitioner acquired thirty-three pieces of improved real estate as a result of default in the payment of indebtedness represented by

notes held by it and secured by deeds of trust on such real estate. All but one of such acquisitions resulted from the petitioner's purchases of the property at foreclosure sales, and that one (244 Wardman Road, Kenmore, N. Y.) was conveyed to the petitioner by the owner of the equity thereby rendering formal foreclosure unnecessary (App. 17b).

During the period 1929 through the date of the hearing of this case, September 25, 1944, the petitioner had disposed of all but three of the aforementioned thirty-three pieces of property as follows:

<i>Year</i>	<i>Disposal of property</i>	<i>Gross Profit</i>	<i>or Loss</i>
1929	1 by sale	\$642.60	\$----
1930	1 by exchange	----	----
1931	2 by sale	721.86	----
	1 by exchange	----	----
1932	-----	----	----
1933	1 by sale	----	650.66
	1 by exchange	----	----
1934	lost by foreclosure	----	5396.30
1935	-----	----	----
1936	2 by sale	953.83	----
1937	-----	----	----
1938	-----	----	----
1939	1 by sale in Virginia	503.50	----
1940	2 by sale	3198.66	----
1941	1 by sale	134.18	----
1942 (tax year involved)	10 by sale (1 of them in New York)	17774.49 ^a	----
1943	4 by sale	11647.38	----
1944	2 by sale	no figures available	----

During the tax year involved (1942), petitioner's realized gross profit from the nine sales of real property located in the District and properly attributable to said year was \$12,227.44 (App. 18, 19),^b while its gross income from discounts earned in said year was \$4,685.43, from interest was \$3,493.70, from dividends \$6.88 and from rent \$8,511.51. These were the only sources of income which the petitioner had in said year

^a Includes loss on sale of New York property in the amount of \$806.59. \$6353.64 of this amount was transferred to a reserve for unearned profits and was not included in taxable income by the taxpayer for the tax year here involved.

^b This figure is apparently not reconcilable with the figures shown on page 17d of the appendix. E.g., the latter figures do not appear to reflect the gain from the sale within the taxable year of premises 710 Tuckerman Street, N. W., as disclosed by App. 17c.

(App. 17d). Against petitioner's gross rental income it reported direct expenses incidental to such income-producing property in the total sum of \$6,572.20, thus leaving the sum of \$1,939.31 as petitioner's net rental income before charges for overhead expense for the tax year (App. 17d).

By the same method of computation as that employed above, it appears that the petitioner sustained losses of \$1,694.69, \$4,078.12 and \$1,482.09 from renting property for the years 1932, 1933 and 1934, respectively, and for each of the next seven years had a net income from rents, reaching the peak of such income in the year 1941 when its net income from rents before charges for overhead expenses (App. 17d) was \$2,965.33. With the exception of premises 715 Tuckerman Street, N. W., all of the property sold by the petitioner in 1942 was used by it to secure a rental income for each year such property was held by it including or excluding the year in which each property was acquired and/or the year in which sold, as the case may have been. The petitioner acquired said premises 715 Tuckerman Street, N. W., in 1931 and secured a rent therefrom for the years 1933, 1934, 1939 and 1940 (App. 17c, 17d).

In its District of Columbia income tax return for 1942 (Schedule D-2), the petitioner reported the gains from the sales of the nine pieces of real estate located in the District of Columbia and the loss from the sale of the piece of property located in New York, as gains and losses from the sales of capital assets (App. 18). The Assessor of the District of Columbia refused to hold that such gains were gains from the sales of capital assets and assessed a tax on such gains as ordinary income (App. 2). From the assessment made by the Assessor, the petitioner appealed to the Board of Tax Appeals for the District of Columbia (App. 2, 3).

From the evidence adduced at the trial, the Board found as a fact that the real estate in the District of Columbia which was sold by the petitioner in 1942 was held by the petitioner primarily for sale to customers in the ordinary course of its

business, and concluded as a matter of law that the profits from the sales of such property were taxable (App. 4).

STATUTES INVOLVED

Section 6(b) of Title II of the District of Columbia Revenue Act of 1939, 53 Stat. 1091 (Section 47-1506, D. C. Code 1940), provides that:

"Gains or losses from the sale or exchange of property other than a capital asset shall be treated in the same manner as other income or deductible losses, and the basis for computing such gain or loss shall be the cost of such property or, if acquired by some means other than purchase, the fair market value thereof at the date of acquisition."

Section 29(a) of Title II of the same Act, 53 Stat. 1100 (Section 47-1529(a), D. C. Code 1940), provides that:

"The assessor is hereby required to administer the provisions of this title. The assessor shall prescribe forms identical with those utilized by the Federal Government, except to the extent required by differences between this title and its application and the Federal Act and its application. He shall apply as far as practicable the administrative and judicial interpretations of the Federal income-tax law so that computations of income for purposes of this title shall be, as nearly as practicable, identical with the calculations required for Federal income-tax purposes. As soon as practicable after the return is filed the assessor shall examine it and shall determine the correct amount of the tax."

SUMMARY OF ARGUMENT

The property which the petitioner sold in 1942 was held by it primarily for sale, and was sold by the petitioner

to its customers in the ordinary course of its business, and the profits derived from the sales thereof are taxable under Section 6(b), *supra*.

The question of whether the real estate was held by the petitioner primarily for sale to its customers in the ordinary course of its trade or business is a question of fact. The Board's findings of fact on such question are supported by substantial evidence, are not clearly wrong, and therefore should not be disturbed.

ARGUMENT

The petitioner is authorized under its certificate of incorporation to buy, sell, rent, exchange, or otherwise acquire and hold, own, improve, develop, rent, mortgage, encumber, sell, or otherwise dispose of real estate.

It appears that the petitioner's principal business activities have more or less kept pace with changing business conditions. During the early years of its corporate existence, 1922 through 1931, the petitioner's only business activities and hence its only sources of income (with the exception of two sales of real estate made in 1931 and the receipt of a small dividend in 1927) were discounting notes and receiving interest. During the latter part of this period of time the petitioner began acquiring real estate by buying the same in at foreclosure. Between the years 1929 and 1937, it acquired thirty-three pieces of improved real estate. During the period 1929 through 1936, the petitioner sold, exchanged or lost ten pieces of property. Six pieces of property were sold by the petitioner during said period; three pieces were exchanged; and petitioner allowed one to be lost at foreclosure to the holder of first trust notes. Petitioner operated at a loss for each of the first seven years of this eight-year period.

During the next two years, 1937 and 1938, petitioner did not sell or otherwise dispose of any real estate.

The petitioner had twenty-three of the said thirty-three pieces of real estate at the beginning of the calendar year,

1939. It sold one piece of real estate during that year, and in the next five years, 1940 through 1944, the petitioner sold all but three of the remaining twenty-two pieces. In the tax year here involved the petitioner sold ten pieces of real estate, nine of which are located in the District of Columbia.

In the tax year here involved, 1942, the petitioner's gross profit from its sales of property was almost three times as great as its gross income from discounts earned, almost four times as great as its gross income from interest, and almost half again as great as its gross income from rents, and approximately six times as great as its net income, before overhead, from rents.

Petitioner's statement in its brief (p. 2) that "From the date of its organization it was engaged exclusively in the business of buying second trust notes secured by real estate" requires qualification. The petitioner received rents on property owned by it and this constituted a "business" or "commercial activity". *District of Columbia v. Wardell*, 74 App. D. C. 184, 122 F.(2d) 202. It made a loan to the "Wardman Corporation" and may have made a few other small loans. And it sold real property from time to time over a period of eighteen years.

"* * * Questions of taxation must be determined by viewing what was actually done, rather than the declared purpose of the participants; * * *." *Weiss v. Sterns*, 265 U. S. 242, 254.

In affirming the action of the Assessor, the Board found as a fact that the real estate sold by the petitioner in 1942 was held by the petitioner primarily for sale to its customers in the ordinary course of its business. There appears to be no doubt that such a finding is properly one of fact. *Dobson v. Commissioner*, 321 U. S. 231; *Real Estate Mortgage & Guaranty Corp. v. District of Columbia*, 78 U. S. App. D. C. 390, 141 F.(2d) 361. See also *Neils Schultz*, 44 B. T. A. 146; *Julius Goodman*, 40 B. T. A. 22, and *A. R. Calvelli*, 43 B. T. A.

6, wherein the United States Board of Tax Appeals (now Tax Court of the United States) in dealing with the question here presented included in its facts a finding that the property was held by the taxpayer for sale to customers in the ordinary course of its trade or business.

The phrase "property held by the taxpayer primarily for sale in the course of his trade or business", excluding such property from the definition of "capital assets", first appeared in Federal income tax law in the Revenue Act of 1924.¹ The phrase was amended in 1934 by adding thereto the words "to customers" and "ordinary".² The pertinent words of Section 6(a) of the District Act, *supra*, are identical with those in the 1934 Federal Act.³ The definition of "capital assets" in the Federal law was again amended in 1938 to exclude therefrom, in addition to property covered by the phrase in question, "property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(1)".⁴ Insofar as here pertinent, said Section 23(1) provided for the deduction, in computing net income, "of a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, * * *".⁵ Thus, as amended, the definition of "capital assets" excluded business buildings but not land,⁶ since, of course, the land is not depreciable property. The definition of "capital assets" was again amended in 1942, effective for taxable years beginning after December 31, 1941, by excluding therefrom "real property used in the trade or business of the taxpayer".⁷ Said Section 23(1) was also amended in 1942 (retroactively effective for taxable years beginning after December 31, 1938) to

¹ Section 208(a), Revenue Act of 1924, 43 Stat. 262-263.

² See Section 117(b), Revenue Act of 1934, 48 Stat. 714.

³ There was no provision in the definition of "capital assets" contained in the 1934 Federal Act as to length of time the property had to be held to come within the definition.

⁴ Section 117(a)(1), Revenue Act of 1938, 52 Stat. 500.

⁵ 52 Stat. 462.

⁶ See 452 CCH, Par. 865.19.

⁷ Section 151(a), Revenue Act of 1942, 56 Stat. 846, U. S. C., Supp. III, Title 26, Sec. 117(a)(1).

provide for an allowance for depreciation "of property held for the production of income" in addition to that allowed on "property used in the trade or business".⁸ The provisions of Federal income tax law relating to sales of real estate used in a trade or business were amended by Section 151(j) of the Federal Revenue Act of 1942.⁹ The effect of the amendments of 1942 is explained by Mertens¹⁰ in the following manner:

"The Revenue Act of 1942 made important changes in the law relating to sales and exchanges and involuntary conversions of real estate used in a trade or business. Under the law as amended by the 1942 Act real estate properties, both land and improvements, held for more than six months are treated as ordinary business assets and not capital assets, subject to the capital gain and loss provisions. However upon the sale of such assets, if there is a gain, it will be treated as a capital gain with the limitations applying to the taxation of capital gains; but if there is a loss, it may be taken in full as an ordinary loss against other income. This rule is also made applicable in the same manner to depreciable assets used in the trade or business and to gains or losses upon the involuntary conversion of property used in the trade or business."

It should be pointed out that under Federal income tax laws all gains from the sale or exchange of property are subject to taxation whether the property sold be "capital assets" or not, while under Section 6(a) of the District Act, *supra*, gains and losses from the sale of "capital assets" are not to be recognized in computing a taxpayer's net income under the District Act.

Under Section 6(a) of the District Act, *supra*, there were only two facts relevant to the question of the petitioner's

⁸ Section 121(c), Revenue Act of 1942, 56 Stat. 819, U. S. C., Supp. III, Title 26, Sec. 23(l).

⁹ 56 Stat. 798, 846, U. S. C., Supp. III, Title 26, Sec. 117(j).

¹⁰ Mertens, *Law of Federal Income Taxation*, Vol. 3, Section 22.11a, p. 120, 1944 Supp.

liability for tax on the gains from the sales in question. The first fact, i.e., the length of time the taxpayer held the property, was admitted to have been over two years. Thus, the Board had only a single question of fact to determine in this case, and that was whether the property sold was held primarily for sale to customers in the ordinary course of business. In arriving at its decision in the case at bar, the Board adopted the same reasoning which it had expressed in *Henry J. Robb, Inc. v. District of Columbia*, No. 8951 in this Court, to the effect that foreclosure is not an abnormal or wholly unanticipated step in the liquidation of a debt secured by a deed of trust on real estate and that the next step of the creditor, in logical sequence, after acquisition of property as a result of foreclosure, is to dispose of the property and realize money for further investment in similar obligations, thus making the holding of the property for resale one of the steps in the course of the business of the lender. See *Harr v. MacLaughlin*, (D. C. E. D. Pa., 1936), 15 F. Supp. 1004.

The original purpose for which the taxpayer acquired the property is not controlling on the question of whether the property was held primarily for sale. *Ehrman v. Commissioner*, (CCA-9), 120 F.(2d) 607, cert. den. 314 U. S. 668; *J. O. Chapman v. Commissioner* (May 20, 1944), T. C. Dec., CCH, 14,005(M); *Alexander Weil v. Commissioner* (June 3, 1944), T. C. Dec., CCH, 13,973(M). And the extent of the taxpayer's operations in the real estate business is likewise not controlling. *Amelie M. Staff v. Commissioner* (October 31, 1944), T. C. Dec., CCH, 14,216(M). The fact that the petitioner sold the property through a licensed real estate broker is immaterial. *Gruver v. Commissioner* (CCA-4), 142 F.(2d) 363.

In its brief, the petitioner relies on the opinion of Judge Leech (which was apparently not reviewed by the Tax Court) in *Kanawha Valley Bank v. Commissioner*, 4 T. C. 252, decided October 31, 1944, and the memorandum opinion of the Tax Court in *Ashton C. Jones et al. v. Commissioner*, CCH (1943),

Par. 7280, entered March 22, 1943, in support of its position. In its reliance on these cases, the petitioner says that if the decision of the Board is affirmed in this case it would be confronted with a dilemma because the sales of real estate here involved would be treated by the District of Columbia as sales of property held by it primarily for sale to its customers in the ordinary course of its business, and the same sales would be construed as the sale of a capital asset by the Federal Government.

This position is not sound for a number of reasons. First, there is nothing in the record in this case to indicate that the Federal Government either has construed, or would construe, the sales in question to be sales of capital assets. Quite to the contrary, it appears that the real property sold by the petitioner in 1942 could not possibly be construed to be "capital assets" under the Federal law as amended in 1942 (effective for taxable years beginning after December 31, 1941), since such property, having been used by petitioner to secure a rental income, was subject to the allowance for depreciation. Cf. *John McNeil Burns v. Commissioner* (January 31, 1945), T. C. Dec., CCH, 14,375(M). It is true that under the present Federal law the taxpayer would be allowed to pay the tax on such gains as if the gains were from the sale of capital assets if such gains exceeded losses from sales of property of similar character,¹¹ and if the property had not been held by the taxpayer primarily for sale to customers in the ordinary course of its business (Sec. 117(j), I. R. C.) But because the District Act is not similar to the 1938 and 1942 Federal Revenue Acts, the manner in which the sales involved would be treated under those Federal Acts as immaterial.¹²

Second, the facts in the case at bar are not analogous to those in the *Kanawha* case, *supra*. The petitioner in the *Kanawha* case was a bank, while the petitioner in this case is

¹¹ See quotation from Mertens, *supra*, page 9 of this brief.

¹² *Eastman Kodak Co. v. District of Columbia*, 76 U. S. App. D. C. 339, 131 F. (2d) 347.

incorporated as, and authorized to engage in, a real estate business.

In the *Kanawha* case the Tax Court stated:

"We think it unreasonable to conclude that petitioner, forbidden by state law to carry on a real estate business, was actually engaged in that business and selling real estate to customers in the regular course thereof, *merely* because it had acquired and sold three parcels of real estate over a period of two years, the transactions in each instance being an incident to the collection or recovery of money loaned by it in the transaction of its regular banking business. * * *"
(Italics supplied.)

In its attempt to bring itself within the ambit of the *Kanawha* case, the petitioner says that it too is prohibited by law from engaging in the business of buying, selling, or dealing in real estate, by Section 29-201, D. C. Code 1940. The petitioner is a Virginia corporation and under the laws of that State it is authorized to engage in the business of buying, selling and dealing in real estate.¹³ Its certificate of incorporation specifically authorizes it to engage in such business. This Court, in *Groo & Norman v. Robinson*, 42 App. D. C. 387, interpreted the proviso in Section 29-201, aforesaid, to mean that no domestic corporation is authorized to hold real estate except as an incident to its business and that no such corporation is authorized to hold real estate for the purpose of dealing in it. And in *Hight v. Richmond Park Improvement Co.*, 47 App. D. C. 518, 532, quoting from *Groo & Norman v. Robinson*, *supra*, it was held that:

"* * * Congress having declared a public policy for this District, in this affirmative way, it goes without saying that a foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. * * *"

But as this Court went on to say (p. 533):

¹³ Virginia Code, 1942, Section 3777(d).

"* * * The rule is settled that want of capacity in a foreign or domestic corporation to own and dispose of real estate can only be asserted by the State. It is unnecessary, therefore, to decide whether or not the business done by the improvement company is against the public policy of the District of Columbia, since in no event is Hight in position to avail himself of this defense, the question being one only which concerns the District of Columbia. * * *"

And the District of Columbia has not asserted any want of capacity in the petitioner to own and dispose of real estate.

Even if petitioner's purchases and sales of real estate were illegal there appears to be no reason why it should not pay a tax upon the gains from such sales. *United States v. Sullivan*, 274 U. S. 259, 263.

The *Jones* case does not appear to lend any support to the petitioner's position. The decision in that case was predicated upon the "frequency and continuity of transactions" test in determining whether the property sold was held by the taxpayer primarily for sale to customers in the ordinary course of business. There appears to be a tendency since the decision in the *Jones* case to abandon that test. *J. O. Chapman v. Commissioner, supra*. See also J. K. Lasser's Tax Clinic, 78 Journal of Accountancy 414 (November 1944).¹⁴ But, assuming *arguendo* that such a test is controlling on the question involved, the *Jones* case still would not appear to support the petitioner in the case at bar, for the transactions involved in the *Jones* case were nowhere near as frequent and continuous as have been the real estate transactions engaged in by the petitioner.

It was conceded by the respondent in the *Jones* case that

¹⁴ In this article it is stated that " * * * It would appear from the decision [referring to the *J. O. Chapman* case] and the memorandum decisions in *Alexander Weil* and *Estate of Douglas S. Mackall* (decided since the *Chapman* case) that the 'frequency and continuity' test is no longer regarded as controlling. The courts should and will consider in each capital-gain case the purpose of acquisition and disposition of property, the attendant circumstances, and other related facts. Lewis says, 'This is as it should be.'". (Matter in brackets supplied.)

"the primary purpose in acquiring this property may have been for investment." The property sold by the petitioner in the instant case was not acquired for any such purpose; it was acquired because "foreclosure was necessary" (Petitioner's brief, p. 2). It is significant that the petitioner did not use any of the money received by it from the sales of real estate to purchase any other property. From an analysis of the petitioner's net rental income, before any charges for overhead expenses, from its property it may be fairly presumed that the reason for the petitioner's failure to so reinvest such money was simply that it had found that its rental income-producing properties did not in fact represent good investments.

CONCLUSION

The only question presented to this Court on review is whether the findings of fact of the Board of Tax Appeals are clearly wrong. The Board's findings of fact in this case are not clearly wrong; they are supported by substantial evidence, and therefore should not be disturbed.¹⁵

Respectfully submitted,

RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
HARRY L. WALKER,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building.

¹⁵ *Real Estate Mortgage & Guaranty Corp. v. District of Columbia, supra.*

No. 8950

JOINT APPENDIX TO BRIEFS

United States Court of Appeals

DISTRICT OF COLUMBIA

WARDMAN REAL ESTATE INVESTMENT CORP.,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent.

On Petition for Review of Decision of the Board of
Tax Appeals for the District of Columbia.

*United States Court of Appeals
for the District of Columbia*

FILED MAR 28 1945

Joseph W. Stewart

CLERK

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 8950

WARDMAN REAL ESTATE INVESTMENT CORP.,
Petitioner,

vs.

DISTRICT OF COLUMBIA
Respondent.

On Petition for Review of Decision of the Board of
Tax Appeals for the District of Columbia.

JOINT APPENDIX TO BRIEFS

1 BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

Wardman Real Estate Investment
Corporation

Petitioner,

vs.

District of Columbia

Respondent.

Docket No. 762

PETITION

The above named petitioner petitions for a reduction of an assessment of income taxes against it and alleges as follows:

1. The petitioner is a corporation organized and existing under the laws of the State of Virginia with its principal office at 1024 Vermont Avenue, N. W., Washington, D. C.

2. The tax in controversy is an income tax for the calendar year ending 1942, and in the amount of \$636.12.

3. The notice of assessment was dated September 3, 1943 and the tax was paid by the petitioner under protest on November 2, 1943, a written protest having been filed on September 30, 1943 as will appear in the copy of the notice of assessment hereto attached as Exhibit A.

4. Petitioner assigns as errors committed by the assessing authority the following:

a. The assessing authority failed to allow as gains or losses from the sale or exchange of a capital asset, sales or real estate held by taxpayer for more than two years, but ruled that same was property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

5. The petitioner, a corporation organized under the laws of the State of Virginia, having its principal place
2 of business in the District of Columbia for the purpose of conducting a brokerage business—and having its principal place of business in the District of Columbia purchased premises 723 Roxboro Place, 6302 5th Street, 2925 Cathedral Avenue, 526 Tuckerman Street, 2911 28th Street, 2104 1st Street, 715 Tuckerman Street, 710 Tuckerman Street, and 525 Somerset Place, all in the District of Columbia during the years 1930, 1932, 1933, 1934, and 1935, and sold same during the year 1942, from which there

resulted a total net gain on the properties in the sum of \$12,227.44.

WHEREFORE, THE PETITIONER PRAYS that this Board may hear the proceeding and cancel the assessment on the sales of the real estate which was held as a capital asset for more than two years.

* * *

4 APPEAL FROM DEFICIENCY ASSESSMENT OF INCOME TAX FOR 1942

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Wardman Real Estate Investment Corporation, is a business corporation organized in 1922 under the laws of the State of Virginia. According to its charter, its objects include a variety of business enterprises, including that engaged in as hereinafter set forth.

2. From the time of its incorporation to and including the year 1942, the business of the corporation was buying notes secured by deeds of trust on real estate.

3. During the period from 1929 to 1937, inclusive, it acquired thirty-three pieces of improved real estate as a result of defaults in the payment of indebtednesses represented by notes held by it and secured by deeds of trust thereon. Thirty-two of such acquisitions resulted from petitioner's buying the properties in at the foreclosure sales and in one case the owner of the equity conveyed the property to petitioner in satisfaction of the debt, thereby rendering formal foreclosure unnecessary.

4. Thirteen of the properties so acquired by petitioner were sold by it prior to 1942. In 1942 it sold ten of such properties in the District of Columbia at a profit.

5 Petitioner filed its District of Columbia income-tax return for 1942. It did not compute or pay a tax on any portion of these profits, claiming that they had arisen from the sales of capital assets and were therefore not taxable. The Assessor ruled that the profits were taxable and made an increase in assessment accordingly.

5. This appeal is from the assessment of additional income tax resulting from the action of the Assessor in holding the profits of the sale of the real estate to be ordinary income and therefore taxable.

6. The real estate in the District of Columbia referred to in Finding of Fact No. 4, sold during 1942, was held by the taxpayer primarily for sale to customers in the ordinary course of its business.

CONCLUSIONS OF LAW

1. The profits on the sale of the real estate referred to in Finding of Fact No. 4 sold in 1942, were taxable.

2. No tax was erroneously assessed against or collected from petitioner.

Decison will be entered for respondent

LAWRENCE KOENIGSBERGER,
Member Sole.

Board of Tax Appeals for
the District of Columbia.

MEMORANDUM

The Findings and Conclusions in this case are based on the same reasoning as that applied in the case of Henry J. Robb, Inc., No. 761 decided this day, in which an opinion has been filed.

LAWRENCE KOENIGSBERGER,
Member Sole.

Board of Tax Appeals for
the District of Columbia.

DECISION

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 17th day of October, 1944

ADJUDGED AND DETERMINED, That income taxes for the year 1942 were not erroneously collected by the District of Columbia from the petitioner, Wardman Real Estate Investment Corporation; and that the petitioner is not entitled to any refund thereof.

LAWRENCE KOENIGSBERGER,
Member Sole.
Board of Tax Appeals for
the District of Columbia.

7 *PETITION OF TAXPAYER FOR REVIEW BY
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA FOR A
DECISION BY THE BOARD OF TAX AP-
PEALS FOR THE DISTRICT OF COLUMBIA*

Wardman Real Estate Investment Corporation, the petitioner in this cause, by Joseph FitzGerald, Jr., counsel, hereby files its petition for a review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered October 17, 1944, determining that income taxes for the year 1942 were not lawfully assessed against the petitioner by the Assessor of the District of Columbia and collected from it by the Collector of Taxes of the District of Columbia for the calendar year 1942 in the amount of \$636.12.

I

The petitioner is a corporation organized and existing under the laws of the State of Virginia with its principal office at 1024 Vermont Avenue, N. W., Washington, D. C.

II

8 *NATURE OF THE CONTROVERSY*

(a) The assessing authority failed to allow as gains or losses from the sale or exchange of a capital asset, sales of real estate held by taxpayer for more than two years but ruled that same was property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(b) The petitioner, a corporation organized under the laws of the State of Virginia, having its principal place of business in the District of Columbia for the purpose of conducting a brokerage business—purchased premises 723 Roxboro Place, 6302 5th Street, 2925 Cathedral Avenue, 526 Tuckerman Street, 710 Tuckerman Street, and 525 Somerset Place, all in the District of Columbia during the years 1930, 1932, 1933, 1934, and 1935, and sold same during the year 1942, for which there resulted a total net gain on the properties in the sum of \$12,227.44.

(c) In its income tax return for the year 1942 the petitioner reported the aforesaid income but claimed that it was not liable for taxes thereon for the reason that the assessing authority failed to allow as gains or losses from the sale or exchange of a capital asset sales of real estate held by taxpayer for more than two years. The respondent ruled that same was property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. The respondent held that the petitioner was subject to tax on said transactions and assessed a tax of \$636.12 against the petitioner thereon and notified the petitioner of such assessment. The petitioner paid the said tax to the Collector of Taxes of the District of Columbia under protest in writing on November 2, 1943 and appeals from said assessment to the Board of Tax Appeals.

III

9 The petitioner being aggrieved by the findings of
fact and conclusion of law contained in said findings
and opinion of the Board of Tax Appeals, and by its
decision entered in pursuance thereto desires to obtain
a review thereof by the United States Court of Appeals
for the District of Columbia.

* * *

12 MR. SIMMON: Yes. I understand there is no
question but that both companies are mortgage
companies?

MR. ROBB: Robb is a general real estate business,
selling real estate for others. H. J. Robb is not a mort-
gage company,—Wardman is. The Wardman business has
been primarily that. The only reason why they owned
real estate was because they had to do it.

13 MR. SIMMON: My recollection is, and I am cer-
tain the transcript shows that Mr. Robb stated this—
in the transcript the question was asked—"Q. Is
this corporation a mortgage finance company or engaged
in mortgage finance business? A. It is engaged in that
business. We are approved mortgagees for FHA."

* * *

BY THE BOARD: I don't care whether they are a
mortgage finance company or not. Those are the things
they did. You can characterize it any way you please.

MR. SIMMON: I think the character of the corporation
ought to be shown for more than five year period. It may
be material.

* * *

21 HENRY J. ROBB,

• • •

DIRECT EXAMINATION

BY MR. FITZGERALD:

Q. State your name. A. Henry J. Robb.

Q. Mr. Robb, what is your business? A. I am secretary and treasurer of Wardman Real Estate Investment Corporation.

Q. Under the law of what State is that incorporated? A. Virginia.

Q. Where does it have its principal place of business? A. Washington, D. C.

Q. When was it incorporated? A. 1922, I think is the date. There is a certified copy there—(examining certified copy)—1922.

MR. FITZGERALD: I offer in evidence Certificate of Incorporation of the Wardman Real Estate Investment Corporation.

BY THE BOARD: It will be marked Petitioner's Exhibit "1."

MR. WALKER: No objection.

Q. Calling your attention to the year 1942, I will ask you what was the principal business of the corporation?

A. They sold second trust notes.

22 Q. What has been the principal business of the corporation since the date of its corporation? A. We have always considered our only business was buying notes. Unfortunately, we had to take in some real estate in securities which the corporation owned.

Q. Is the Wardman Real Estate Investment Corporation engaged in the business of buying and selling real estate?

A. No sir.

Q. Has it ever been so engaged? A. Only incident to property which we acquired under notes—

BY THE BOARD: I think that is a conclusion which I shall have to reach as to what business it was engaged in. I suggest you ask the witness what the corporation has done. What it has bought and how much, and how much it has sold.

Q. What has the corporation done? A. We have bought second trust notes. There are a number of cases which we had to foreclose on real estate on which we held securities, in order to protect our investment in the notes.

Q. When you acquired the notes on which you subsequently foreclosed on the real estate, did you acquire it for the purpose of buying or selling this real estate? A. No indeed. We hoped that would not be necessary.

Q. Was that necessary in the majority of cases where you bought second trust notes? A. In the majority no, but in a number of cases. At one time this corporation had \$800,000 or \$900,000.

Q. Do you know how many pieces of property your company took in in your foreclosures since 1922? A. They are listed here.

MR. WALKER: I object to him referring to the
23 list without it being in evidence.

BY THE BOARD: Have you seen the list?

MR. WALKER: Yes.

BY THE BOARD: Why not offer the list as an exhibit?

MR. FITZGERALD: We offer in evidence a statement of the Wardman Real Estate Investment Corporation showing income and expenditures from 1922 to 1942, which statement also shows a list of real estate, how acquired, etc.

BY THE BOARD: It will be marked Exhibit "2" and received in evidence.

MR. WALKER: No objection.

Q. I hand you this paper and ask you what that is? A. This is an income tax return of the Wardman Real Estate Investment Company to the District of Columbia for 1942.

MR. FITZGERALD. I offer this as Exhibit "3."

BY THE BOARD: It will be received.

Q. Calling your attention to 723 Roxboro Place, I will ask you if the Wardman Corporation acquired that property? A. 723 Roxboro Place was acquired—

* * *

24 Q. I will ask you under what circumstances those properties were sold?

BY THE BOARD: Can't we assume that they sold them and that the circumstances were such as to make an advantageous sale and get as much money out of them as possible. Go ahead and let him testify to it.

A. We never contemplated holding these properties for any longer period of time than necessary to recover our funds.

BY THE BOARD: You have no objection to a little profit?

A. Of course not. Of course, in setting these properties up on our books where there was a deficit the property was set up at a bid price. If that had been carried along—

BY THE BOARD: That is a result of the fact that a loss was shown in the year of the foreclosure?

A. Yes.

BY THE BOARD: The loss was shown, if any, at the time of the foreclosure?

A. Yes, and we attempted to collect on several
25 deficiencies.

Q. Were all the properties in the list I just described on the income tax form, Exhibit "3," acquired by foreclosure? A. Yes, sir, by foreclosure or by being deeded to the corporation in lieu of a foreclosure.

Q. Did the petitioner ever buy any property for the purpose of reselling same? A. No, sir.

Q. Was the petitioner engaged in the business of building and selling houses? A. No.

BY THE BOARD: Ask him—did the petitioner build and sell houses.

Q. Did the petitioner build and sell houses? A. No, sir.

Q. Did the petitioner loan money?

BY THE BOARD: You mean as distinguished from secured notes?

Yes.

A. At one time we loaned Wardman Corporation money on its collateral note, for which they paid a premium. There may have been a few cases where small loans were made, but the greatest majority of the business was buying second trust notes from owners who got them in the sale of properties.

CROSS-EXAMINATION

BY MR. WALKER:

Q. Is the Wardman Real Estate Investment Corporation a licensed real estate broker? A. No, sir.

Q. Do they employ salesmen? A. No, sir.

26 Q. Have they ever employed any? A. No, sir. You mean salesmen of real estate?

Q. Salesmen? A. Before the depression they employed some salesmen to sell its own stock.

Q. On this property that was sold, how did the company sell that property? A. Most of them were sold and then the second trusts taken back. There were a number of all cash sales.

Q. How did you get the buyer? A. Through H. J. Robb, Incorporated. Practically all property was sold through them and commission paid to H. J. Robb, Incorporated. There were some sales through outside brokers.

Q. I understood from your testimony on direct examination that the Wardman Corporation was engaged in the business of buying and selling second trust notes secured by real property? A. I do not believe we ever sold a note

we bought. It was held until paid out or until we had to foreclose on it.

* * *

Q. Do the Wardman Real Estate Investment Corporation and the H. J. Robb Company, Incorporated, occupy the same office? A. Yes.

Q. These trust notes that were held by the corporation, were they, in every instance, purchased by
27 the corporation? A. To the best of my recollection they were. I don't know of any other way they would have acquired them, except by purchase of the notes.

Q. Were any of the trust notes paid in payment for stock of the corporation at its organization? A. No.

Q. When the company sold these properties subsequent to foreclosure did the corporation ever take back deeds of trusts, or trust notes in payment for that subsequent sale? A. Oh, yes.

BY THE BOARD: He testified to that. He said sometimes they sold for cash. There is a column in this statement which shows those—"To reserve as installment"—page three.

Q. Mr. Robb, was there any single seller from whom the Wardman Real Estate Investment Corporation purchased the larger portion of these notes? A. Yes, the Wardman Corporation. This corporation was the outgrowth of a savings club that started in the Wardman office way back in 1918 and was incorporated in 1922 and being there among the employees of the Wardman Company naturally they bought most of the notes from Wardman.

* * *

Q. Mr. Robb, directing your attention now to petitioner's Exhibit "2," particularly the first page—"Statement of Income and Expenditures." Will you refer to that and identify, if such be the case, any expenses for commissions

28 paid on the sale of real property. A. They were not segregated that way. They were charged up as a cost of sale.

BY THE BOARD: In other words, came out of the net proceedings of the sale? A. Yes. The usual procedure was for the title company to deduct that from the sale and remit to the investment company.

BY THE BOARD: The figures shown on that exhibit represent the amount actually received after deduction of the commission? A. I have a column in here—"Gross Sales Price" and "Expense of Sale."

BY THE BOARD: That answers my question. The commission is in that expense of sale? A. Yes.

BY THE BOARD: In the sale of the property 2925 Cathedral Avenue, Northwest, which is the first item listed on page three of Exhibit "3," who made that sale? A. H. J. Robb, Incorporated.

BY THE BOARD: Down on the fourth item—6302 5th Street, who made that sale? A. I don't remember because I would have to refer to the records to see about that for you. There were other outside brokers that sold them. H. J. Robb, Incorporated, sold the majority of them.

* * *

29 A. In this statement on page two, it shows "Income from rents on real estate." And then below it shows "Expense of real estate rental."

* * *

EXAMINATION

Q. Mr. Robb, you say that the Wardman Real Estate Investment Corporation purchased most of its notes from Wardman? A. Yes.

Q. When you say "Wardman" what do you mean?
A. When Wardman was known as the Wardman Corpor-

ation or Wardman Construction Company. We didn't buy any notes from them after 1930—all bought previous to that.

Q. And the Wardman Company or Wardman Construction Company was a corporation which was engaged in real estate business in a variety of forms? A. Yes.

Q. Buying and selling property, developing and holding property, and buying and holding it? A. Yes.

Q. And anything that had to do with real estate?
30 A. Yes.

Q. And the Wardman Real Estate Investment Corporation was composed, to a great extent, of employees of the other Wardman corporations? A. Yes, until the time they put on a campaign to sell stock. We sold quite a good deal of stock to people who had no other connection with the Wardman people—friends or subcontractors furnishing material.

Q. Was the Wardman Real Estate Investment Corporation the only purchaser of the Wardman notes, or were they sold generally? A. There were individual purchasers and banks. The International Bank was one. Hendricks bought some.

Q. Was Wardman Real Estate Investment Corporation formed to be an outlet or a means of marketing the notes of the other Wardman corporations? A. No, it was not formed that way. It did take a good deal of notes from Wardman. After this company was going along so well Wardman organized another corporation known as Wardman Mortgage and Discount Corporation which purchased notes only from Wardman. This company would buy notes from anybody that presented one that passed the board of directors.

*CERTIFICATE OF INCORPORATION
OF
WARDMAN REAL ESTATE INVESTMENT
CORPORATION.*

* * *

The purposes for which the corporation is formed are as follows:

To purchase or otherwise acquire, hold, sell, exchange, pledge, hypothecate or otherwise deal in, notes, bonds, mortgages or evidences of indebtedness, and the obligations of any person, co-partnership, joint stock company, or corporation.

To subscribe, purchase, acquire, hold, sell, exchange, pledge, hypothecate or otherwise deal in, notes, bonds, stocks, notes, bonds, debentures or other evidences of indebtedness and obligations of any private, public, quasi-public, or municipal corporation, domestic or foreign, or of any domestic or foreign state, government or governmental authority, or of any political or administrative sub-division or department thereof, and all trust, participation or other certificates of, or receipts evidencing interest in any such certificates; and while the owner of any such stocks, bonds, or other evidences of indebtedness or interest therein, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon for any and all purposes.

To acquire by purchase, lease or otherwise, the good will, business, rights, property and assets of all kinds and undertake or underwrite, assume or guarantee, the whole or any part of the liabilities of any individual, co-partnership, joint stock company, association, or corporation now or hereinafter created, and having the same general purposes of this corporation, and to hold, conduct, or carry on, or sell or otherwise dispose of the same.

33 To make, purchase or otherwise acquire, hold, own, manage, sell, pledge, transfer, export, import, trade in, or deliver any goods, wares and merchandise of every character and description; and to carry on a general mercantile and commercial business in any part of the world.

To buy, sell, rent exchange, or otherwise acquire and hold, own, improve, develop, rent, mortgage, encumber, sell or otherwise dispose of, real and personal property of every character and description, and any and all rights, privileges, easements, interest or estate in same, in any part of the world, and in any manner to turn the same to account.

To apply for, obtain, register, purchase, lease or otherwise acquire, hold, own use, operate, introduce, sell, assign or otherwise dispose of, any and all copyrights, trademarks and patents, and any and all inventions, improvements, apparatus, appliances and processes used in connection with, or secured under, letters patent of the United States of America, or elsewhere, or otherwise, and to use, exercise, develop or grant licenses in respect of, or otherwise turn to account, any such copyrights, trademarks, patents, inventions, improvements, apparatus, appliances, processes and the like, or any property or information so acquired.

To make and enter into contracts with, and to act as agent or representative for (other than fiscal), any individual, firm, association, private, public, quasi-public, or municipal, corporation, state, government or governmental authority; and to aid any lawful enterprise. But the powers conferred by this clause are restricted to such as carry out in whole or in part, the purpose of this corporation.

34 To borrow money for its corporate purposes; to make, accept, endorse, execute, issue and deliver bonds, debentures, notes, bills of exchange or other obli-

gations; to mortgage, pledge, hypothecate any stocks, notes, bonds or other evidence of indebtedness, and any other property held by it; and to loan money.

To aid by loan, subsidy, guaranty, or in any other manner whatsoever, any corporation whose stocks, bonds, securities, or other obligations are in any manner, either directly or indirectly, held or guaranteed; to do any and all other acts or things towards the preservation, protection, improvement or enhancement in value of any such stocks, bonds, securities or other obligations, and to do all and any such acts or things designed to accomplish any such purposes.

To acquire, use, undertake, manage and dispose of contracts, properties and rights of all kinds, including the assets, franchises, business, good will and liabilities of corporations, associations, firms and individuals, and to give guaranties in respect thereto; and, generally, to do anything that a natural person might lawfully do or cause to be done in connection with any of the said things.

Generally to do all things necessary or proper for, or pertaining to the execution of the foregoing powers, or any of them.

Any and all of the foregoing powers to be exercised in manner not inconsistent with the laws of the Commonwealth of Virginia.

To purchase, retire, hold, or reissue the shares of its capital stock.

To purchase or otherwise acquire, hold, sell, exchange, pledge, hypothecate, or otherwise deal in, notes, bonds, mortgages, or other evidences of indebtedness, and the obligations of any persons, firms, co-partnerships, joint stock company, or corporation.

Petitioner's Exhibit No. 2

125720
 RECEIVED NO. 2
 HELD BY THE JUDGE

STATE OF NEW YORK
 STATEMENT OF INCOME AND EXPENDITURES

	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Income										
Discounts earned.....	7,424.21	12,196.31	17,736.89	26,401.28	46,779.17	68,666.05	48,631.80	37,641.33	11,592.77	3,699.21
Interest earned.....	3,411.16	7,760.47	17,255.92	28,440.61	42,004.33	73,805.72	53,363.00	33,131.06	22,247.29	769.05
Dividends received.....	-----	-----	-----	-----	-----	26.00	-----	-----	-----	1,811.41
Miscellaneous - salaries	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
credited back.....	-----	-----	-----	-----	-----	-----	-----	-----	2,126.00	-----
Loss.....	-----	-----	-----	-----	-----	-----	-----	10,891.67	8,682.05	26,549.66
	10,035.37	19,956.78	34,992.81	54,841.89	88,783.60	132,487.77	101,984.80	81,663.95	44,647.11	50,818.10

Expenses

Expense.....	834.85	471.66	1,937.60	4,968.45	5,971.68	5,620.19	6,589.96	5,649.16	1,493.10	2,627.17
Stationery.....	371.20	1,000.00	-----	-----	-----	-----	-----	-----	-----	-----
Revenue stamps.....	79.81	71.40	42.50	-----	-----	-----	-----	-----	-----	-----
Commissions on sale of stock..	10.00	1,822.07	1,643.00	1,139.00	679.00	-----	-----	-----	-----	-----
Taxes.....	-----	360.00	399.00	516.00	2,809.78	2,171.30	2,505.95	2,327.87	285.00	285.00
Interest paid on bank loans...	-----	-----	6,194.57	9,077.16	12,772.97	26,249.68	12,641.86	6,536.93	2,869.01	2,804.85
Bad debts.....	-----	-----	-----	-----	-----	-----	-----	67,250.00	40,000.00	45,153.97
Expense on real estate.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	47.19
317 Foxesbury Place.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Profit to surplus.....	9,535.52	16,231.66	24,776.14	39,141.29	66,549.17	98,446.60	81,247.03	-----	-----	-----
	10,836.37	19,956.78	34,992.81	54,841.89	88,783.60	132,487.77	101,984.80	81,663.95	44,647.11	50,818.10

Petitioner's Exhibit No. 2 (Continued)

Page Two Wardman Real Estate Investment Corporation - List of real estate

<u>Address of property and how acquired</u>	<u>Date</u> <u>Acquired</u>	<u>Cost of</u> <u>Property</u>	<u>Deficiency</u> <u>in Fore-</u> <u>closure</u>	<u>Deficiency</u> <u>Charged off</u> <u>as Bad Debt</u>	<u>Date</u> <u>Sold</u>	<u>Gross</u> <u>Sales</u> <u>Price</u>	<u>Expense</u> <u>of sale</u>	<u>Deprec.</u> <u>To reserve</u> <u>Prev. as instal-</u> <u>lment</u>	<u>Gain</u>	<u>Loss</u>
813 Tuckerman Street, N.Y. Was foreclosed under second trust of J. P. Sullender	11/1933	4,651.13	1,736.46	12/31/34	1943	7,968.25	424.10	1,134.08	4,017.07	----
2911 26th Street, N.Y. Was foreclosed under second trust of Mary P. Reed	4/1933	8,905.58	1,845.40	12/31/33	1942	11,752.07	708.00	1,902.60	4,041.09	----
816 Underwood Street, N.Y. Was foreclosed under second trust of Ella J. J. Vickers	10/1934	6,286.64	-----	-----	1944 Sold					
822 Underwood Street, N.Y. Was foreclosed under second trust of C. T. McCarthy	9/1930	6,911.69	-----	-----	1943	7,950.00	697.50	2,227.19	369.00	----
244 Wardman Road, Kenmore, New York. Was deeded by Mrs. Minnie J. Howard, maker of second mortgage, to avoid foreclosure	5/1942	6,114.11	-----	-----	1942	5,600.99	293.47	-----	-----	806.59

Petitioner's Exhibit No. 2 (Continued)

Address of property and how acquired	Date acquired	Cost of property	Deficiency charged off	Date sold	Gross sales price	Expense of sale	Deprec. To Reserve
2925 Cuthbert Avenue, N.Y. Foreclosed under second trust of Mrs. Rose McGraw	12/1935	11,394.17	2,120.35	12/31/36	1942 13,500.00	925.25	1,558.44
2431 2 Street, N.Y. Apartment House. Was acquired under foreclosure to cover second trust notes of \$34,000 held by Commercial National Bank and \$8,400 held by Burton Real Estate Investment Corp. Trustees were refinanced through B. F. Saul Company and both companies advanced sufficient funds to bring debts and obligations up to date. Property was sold until 1936, applying rents to reduction of 1st trust when the apartment was sold and the interest of Commercial National Bank amounting to \$40,120 and of this Corporation amounting to \$10,030 were paid in full.	12/1935	11,394.17	2,120.35	12/31/36	1942 13,500.00	925.25	1,558.44
6421 8th Street, N.Y. Was foreclosed under second trust of A. L. Orme. Property was then sold and foreclosed again under note of C. R. Rafferty	9/1931	7,263.84	----	----	1941 6,944.52	----	1,455.50
6302 5th Street, N.Y. Was foreclosed under second trust of Luther P. Murphy	8/1932	4,341.43	2,313.25	12/31/34	1942 5,400.00	280.75	1,064.00
6316 5th Street, N.Y. Was foreclosed under second trust of S. H. Bell	5/1937	6,964.39	----	Unsold	----	----	----
6318 5th Street, N.Y. Was foreclosed under second trust of John G. and Ruby MacFarlane	6/1933	4,434.24	1,082.68	12/31/35	1940 5,509.82	336.00	744.22
2104 First St., N.Y. Was foreclosed under second trust of M. Udelavich	10/1932	7,286.45	----	----	1942 7,642.57	342.05	1,605.52
2721 14th Street, N.Y. Was foreclosed under second trust of Arthur M. Buchanan et al. And was allowed to go to foreclosure under first trust in June 1934	10/1932	18,229.00	----	----	592.70	----	8,304.20
1110 Leont Street, N.Y. Was foreclosed under second trust of Steve John	2/1931	6,421.01	----	----	1924 7,095.51	181.00	660.38
201 Marconia Ave., later known as 3801 8th Street, N.Y., Arlington, Va., Was foreclosed under first trust of Alcoa Heights Improvement Co.	9/1933	2,511.29	212.15	12/31/37	1939 4,000.00	1,560.21	575.00
3904 Northampton Street, N.Y. Was foreclosed under third trust of Grace E. Williams	9/1935	11,127.26	----	----	1943 10,250.00	512.50	2,349.25
2030 P Street, N.Y. Was foreclosed under second trust of R. F. Milne. Property was allowed to go to foreclosure under 1st trust held by American Security and Trust Company	12/1932	12,188.99	1,365.41	12/31/35	1933	----	----
428-430 R Street, N.Y. Was foreclosed under second trust of J. C. Cook	2/1929	8,749.11	----	----	1931 10,000.00	482.84	759.05
704 Rittenhouse Street, N.Y. Was foreclosed under second trust of W. E. Stewart	10/1932	5,753.05	2,684.37	12/31/32	1943 8,422.55	565.50	1,788.88
725 Bechboro Place, N.Y. Was foreclosed under second trust note of T. J. Myers	10/1932	5,590.59	----	----	1942 6,593.33	398.12	1,651.65
6916 7th Street, N.Y. Was foreclosed under second trust of Victor W. Fortwengler	10/1934	4,154.85	2,167.55	12/31/35	1940 5,509.60	297.05	659.00
525 Somerset Place, N.Y. Was foreclosed under second trust of C. A. Wells	5/1935	5,603.19	----	----	1942 6,315.04	642.08	1,208.04
415 Somerset Place, N.Y. Was foreclosed under second trust of J. J. Hilselberger	11/1932	4,178.47	1,515.54	12/31/32	Sold in 1944	----	----
715 Somerset Place, N.Y. Was foreclosed under second trust of Joe T. Oliver	4/1935	4,694.41	1,997.45	12/31/35	Equity exchanged in 1933 for preferred stock of W.R.B.I. Co.	----	----
729 Somerset Place, N.Y. Was foreclosed under second trust of Alexander and Jessie McKay	6/1931	5,857.71	----	----	Equity exchanged in 1931 for preferred stock of W.R.B.I. Co.	----	----
2126 Tenth Street, N.Y. Was foreclosed under second trust of Clarence M. DeVelle	2/1929	2,357.40	----	----	1929 2,000.00	----	642.60
719 Townsendbury Place, N.Y. Was foreclosed under second trust of P. C. Maxwell	6/1930	2,486.17	----	----	Exchanged in 1930 for preferred stock of W. R. B. I. Co.	----	----
614 Townsendbury Place, N.Y. Was foreclosed under second trust of O. C. Thayer	4/1933	7,097.38	----	Unsold	----	----	----
617 Townsendbury Place, N.Y. Was foreclosed under second trust of S. A. Farmer	4/1931	7,943.37	----	----	1931 7,896.18	----	47.18
617 Townsendbury Street, N.Y. Was foreclosed under second trust of M. Bohannon	10/1934	6,347.50	----	Unsold	----	----	----
616 Townsendbury Street, N.Y. Was foreclosed under second trust of Wiley A. Jackson	10/1934	6,456.55	----	----	1942 6,255.13	725.07	1,206.60
710 Townsendbury Street, N.Y. Was foreclosed under second trust of Edward O. Turner	11/1932	4,121.33	2,275.21	12/31/33	1942 6,980.00	718.97	1,080.60
715 Townsendbury Street, N.Y. Was foreclosed under second trust of George C. Neuhaus Foreclosed again in August 1932 under second trust of T. P. Conn Foreclosed again under second trust of David Anderson	2/1931	7,054.66	----	----	7,423.02	2,507.15	12/31/35
		6,142.23	----	----	1942 8,176.04	944.90	1,210.64
			----	----			1,551.85
			----	----			1,005.70

Petitioner's Exhibit No. 2 (Continued)

Page two - Statement of Income and Expenditures - Wardman Real Estate Investment Corporation

	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942
Discounts earned.....	1,076.38	1,124.04	1,477.30	651.23	786.51	820.15	1,360.74	401.41	842.48	2,370.37	4,485.43
Interest Received.....	7,699.95	4,659.52	3,284.20	3,276.97	2,319.98	1,878.33	1,811.12	768.36	1,376.46	1,797.56	3,493.70
Dividends received.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	6.88
Miscellaneous income.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	118.08	-----
Income from Rents of Real Estate:											
2925 Cathedral Avenue..	-----	-----	-----	-----	1,392.73	1,139.78	1,140.00	1,149.65	1,200.00	1,203.55	117.39
2431 E Street.....	-----	10,345.45	11,002.00	11,649.61	1,727.44	-----	26.00	-----	-----	-----	-----
6421 8th Street.....	-----	126.56	667.10	696.50	710.00	660.00	720.00	660.00	640.00	-----	-----
6302 Fifth Street.....	-----	593.00	565.00	606.85	636.00	660.00	606.00	486.00	556.50	600.00	155.64
6316 Fifth Street.....	-----	-----	-----	-----	-----	436.25	690.00	570.00	660.00	669.00	696.00
6219 Fifth Street.....	-----	178.00	681.25	646.00	674.93	690.00	677.16	499.00	163.51	-----	-----
2104 First Street.....	-----	840.00	910.00	919.00	915.00	846.00	840.00	840.00	840.00	900.00	623.16
2721 Fourteenth Street..	-----	711.00	100.00	25.00	-----	-----	-----	-----	-----	-----	-----
1602 Y Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	447.50
1110 Lamont Street.....	4.16	290.15	637.71	694.06	101.62	1.10	-----	-----	-----	-----	-----
3801 8th St., Arlington..	-----	-----	561.90	450.00	512.40	526.25	503.00	231.00	7.40	855.00	900.00
2904 Northampton Street..	-----	-----	517.00	546.00	300.00	465.00	627.00	840.00	840.00	779.50	760.00
704 Rittenhouse Street..	-----	507.72	714.00	705.26	630.00	747.50	610.00	775.00	394.25	636.67	-----
703 Rowan Place.....	-----	433.00	417.75	417.00	400.00	400.00	410.00	400.00	395.00	636.67	-----
5218 7th Street.....	-----	-----	591.10	601.60	671.00	600.00	600.00	431.00	527.51	-----	-----
525 Somerset Place.....	-----	50.00	501.50	507.50	507.50	500.00	500.00	500.00	500.00	500.00	571.71
612 Somerset Place.....	-----	503.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	600.00
814 Teak Cherry Place....	-----	1,150.00	582.52	743.00	743.00	743.00	618.56	521.00	693.26	77.46	600.00
817 Teak Cherry Place....	-----	-----	125.00	743.00	743.00	710.00	622.00	600.00	600.00	600.00	690.00
517 Teak Cherry Place....	-----	-----	110.00	647.05	647.05	611.69	496.00	614.12	600.00	600.00	70.80
626 Tucker Street.....	-----	567.25	560.00	454.49	72.50	500.00	261.00	560.00	560.00	596.00	281.91
710 Tucker Street.....	-----	104.37	280.00	-----	-----	-----	-----	51.00	55.00	-----	-----
715 Tucker Street.....	-----	110.00	600.00	675.00	666.00	700.00	700.00	606.00	642.50	729.00	750.00
613 Tucker Street.....	-----	441.00	646.00	983.24	1,127.13	915.00	1,140.00	760.00	911.26	769.03	-----
2911 28th Street.....	-----	15.00	709.50	709.50	690.00	734.00	720.00	720.00	720.00	607.00	780.00
816 Underwood Street....	-----	-----	647.15	689.15	723.00	606.00	610.00	663.00	606.00	615.00	750.00
822 Underwood Street....	286.34	612.50	-----	-----	-----	-----	-----	-----	-----	-----	-----
Income from Rents of Real Estate:											
2925 Cathedral Avenue..	-----	-----	-----	-----	-----	-----	-----	-----	-----	184.16	3,168.10
6421 8th Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
6302 5th Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1,790.38
6316 5th Street.....	-----	-----	-----	-----	-----	-----	-----	1,481.90	-----	-----	-----
2104 First Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1,819.89
3801 8th St., Arlington..	-----	-----	-----	-----	-----	-----	-----	126.00	-----	-----	-----
428-430 R Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
723 Roxboro Place.....	-----	-----	-----	-----	-----	-----	-----	-----	1,716.76	-----	960.84
6316 7th Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	275.54
526 Somerset Place.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	766.77
526 Tucker Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1,029.70
715 Tucker Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	5,807.33
2911 28th Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Loss.....	40,696.31	8,031.70	6,772.18	3,005.63	-----	-----	-----	-----	-----	-----	223.32
	50,702.64	59,098.73	73,417.60	32,097.07	19,760.02	17,424.64	17,297.28	14,947.84	18,106.62	16,667.84	23,883.20
Expenditures:											
Expense.....	1,849.90	1,844.10	1,438.16	1,417.89	1,838.44	1,698.88	1,776.87	1,606.09	1,875.40	2,132.84	8,280.84
Taxes.....	206.68	200.90	254.24	285.48	362.07	528.78	1,386.87	770.88	830.87	878.88	784.54
Interest Paid.....	1,338.75	901.56	1,064.51	484.03	106.65	-----	-----	-----	343.60	888.99	388.67
Bad Debts.....	46,490.70	7,194.56	41,911.84	5,757.36	3,444.68	212.15	-----	105.10	-----	-----	-----
Expense on Real Estate Rented:											
2925 Cathedral Avenue..	-----	-----	-----	-----	1,179.66	1,043.99	1,281.79	1,130.51	904.94	932.28	275.43
2431 E Street.....	-----	10,746.62	10,426.22	12,003.24	1,143.92	-----	-----	-----	-----	-----	-----
6421 8th Street.....	-----	396.28	721.71	666.63	616.36	563.17	310.29	374.70	707.64	-----	-----
6302 5th Street.....	136.13	487.99	430.15	417.72	499.33	374.01	459.66	439.61	825.63	824.22	8.80
6316 5th Street.....	-----	-----	-----	-----	-----	358.44	542.63	674.12	410.08	832.48	688.04
6316 6th Street.....	-----	223.63	511.74	406.29	642.72	483.47	442.77	421.11	299.84	-----	-----
2104 1st Street.....	39.81	568.50	644.50	580.29	525.22	734.97	259.25	340.89	789.84	390.84	189.43
2721 1st Street.....	1,231.12	1,373.23	55.29	7.25	-----	-----	-----	-----	-----	-----	-----
1602 X Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	997.64
1110 Lamont Street.....	-----	647.30	566.86	624.10	182.43	-----	-----	-----	-----	-----	-----
3801 8th St., Arlington..	-----	-----	731.74	390.73	390.60	700.47	211.23	151.89	-----	-----	-----
2904 Northampton Street..	-----	-----	1,045.84	966.05	987.73	1,012.41	976.71	737.00	845.22	781.80	750.86
2080 P Street.....	-----	650.66	-----	-----	-----	-----	-----	-----	-----	-----	-----
704 Rittenhouse Street..	346.47	605.51	694.74	584.06	662.89	660.28	677.73	532.90	1,175.70	622.90	841.80
723 Roxboro Place.....	174.86	484.22	677.76	470.71	442.72	492.02	557.52	434.96	880.49	401.74	-----
6316 7th Street.....	-----	-----	696.22	598.45	438.02	677.43	319.24	478.94	76.81	-----	-----
526 Somerset Place.....	-----	282.24	469.92	500.32	494.24	494.24	436.02	566.26	443.86	404.16	488.40
615 Somerset Place.....	54.80	643.29	476.36	485.50	415.27	307.80	238.57	261.10	275.26	290.22	345.26
814 Teak Cherry Place....	-----	430.31	602.22	682.71	713.91	692.87	509.13	517.16	643.79	329.04	691.26
617 Teak Cherry Place....	-----	-----	595.86	607.81	611.43	613.23	778.64	644.98	644.98	330.16	319.81
526 Tucker Street.....	-----	-----	201.61	589.79	646.48	666.33	506.75	504.21	507.82	298.84	8.86
710 Tucker Street.....	43.18	758.67	677.63	945.49	462.25	615.98	562.43	473.98	649.86	426.64	94.86
715 Tucker Street.....	-----	389.07	529.01	479.28	542.29	497.98	164.72	289.19	289.19	289.80	190.80
815 Tucker Street.....	-----	101.03	727.16	468.08	427.74	477.57	277.04	358.25	411.64	236.79	227.11
2911 28th Street.....	-----	924.21	1,069.62	864.50	1,046.47	937.96	958.79	1,202.44	909.44	1,168.84	-----
816 Underwood Street....	-----	-----	169.39	584.13	492.36	678.27	515.76	488.84	603.19	608.84	596.86
822 Underwood Street....	-----	546.21	665.80	516.37	666.93	696.99	645.19	470.87	578.57	840.60	486.81
Expense or Loss on Real Estate Sold:											
2925 Cathedral Avenue..	-----	-----	6,396.30	-----	-----	-----	-----	-----	-----	-----	414.04
2721 Fourteenth Street..	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
723 Roxboro Place.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	177.82
2911 28th Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	0.88
526 Tucker Street.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	484.21
244 Wardman Road, Kenmore, New York.....	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1,188.16
Profit to Surplus.....	50,702.64	59,098.73	73,417.60	32,097.07	19,760.02	17,424.64	17,297.28	14,947.84	18,106.62	16,667.84	23,883.20

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PETITIONER'S EXHIBIT "3"

*DISTRICT OF COLUMBIA
CORPORATION INCOME TAX RETURN
For Calendar Year 1942*

WARDMAN REAL ESTATE INVESTMENT CORPORATION, 1024 Vermont Avenue, Northwest, Washington, D. C., Kind of Business: Real Estate Financing.

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41 Schedule D-2. GAINS AND LOSSES FROM
SALES OR EXCHANGES OF CAPITAL
ASSETS (See Instruction 13)

Description of Property	Date Acquired	Gross Sale Price	Cost or Other Basis
723 Roxboro Place	Oct., 1932	5,593.33	5,590.59
6302 - 5th Street	Aug., 1932	5,400.00	4,364.43
2925 Cathedral Ave.	Dec., 1935	13,500.00	11,384.17
526 Tuckerman Street	Oct., 1934	6,353.13	6,456.55
2911 - 28th Street	Apr., 1933	11,752.07	8,905.58
2104 - 1st Street	Oct., 1932	7,542.57	7,286.45
715 Tuckerman Street	Sept., 1930	8,174.04	6,162.23
710 Tuckerman Street	Nov., 1932	6,950.00	4,161.33
525 Somerset Place	May, 1933	6,315.04	5,603.19
		\$71,580.18	\$59,914.52
244 Wardman Rd., Kenmore, N. Y.	May 1942	5,600.00	6,114.11

Expense of Sale and Cost of Improve- ments	Deprec. Allow- ed as per Prev. Returns	Unearned Profit Trans. to Reserve in Instal. Sale	Amount of Cash Payment in this Sale	Gain or Loss
398.13	1,651.65	603.26	1,493.33	653.00—G
280.75	1,064.00	.....	5,400.00	1,818.82—G
925.23	1,558.44	.....	13,500.00	2,749.04—G
733.07	1,206.69	.....	6,353.13	370.20—G
708.00	1,902.60	.....	11,752.07	4,041.09—G
342.05	1,605.52	.....	7,542.57	1,519.59—G
964.90	1,310.64	1,331.95	1,713.42	1,025.70—G
718.57	1,020.60	3,040.70	500.00	50.00—G
642.08	1,308.06	1,377.83	581.00	.....
\$5,712.78	\$12,628.20	\$6,353.64	.....	\$12,227.44
293.47	.....	.....	.....	806.59—L
				11,420.85

Items of "Unearned Profit transferred to Reserve" represents profits that will not accrue until payments are received on the second trust notes involved.

Enter column 2 as Item 11, Schedule A.....